IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5885 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MULSINGH RATNASINGH SOLANKI

Versus

COLLECTOR OF SABARKANTHA

Appearance:

MR MUKESH R SHAH for Petitioner

MR HM BHAGAT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/09/2000

ORAL JUDGEMENT

Rule. Mr.Bhagat waives service of rule.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the notice

dated 7.6.2000 (at annexure "C" to the petition) issued by the Collector, Sabarkantha calling upon the petitioner to pay the amount for which the petitioner has given cheque towards the payment of royalty for extracting minerals from the mine in question for which lease is given to the petitioner. The petitioner was informed by the said notice that if the amount as aforesaid was not paid, action will be taken to suspend the lease and that the petitioner will also be prevented from extracting the minerals.

3. It is the case of the petitioner that he had paid the amount of royalty as required by law and that the petitioner does not owe any amount to the respondents. It is further submitted that the officers of the Flying Squad had come and without giving any opportunity of hearing to the petitioner cheque for Rs.5,65,860/- was taken from the persons other than the petitioner.

4. In response to the notice issued by the Court, no affidavit-in-reply is filed but Mr.Bhagat, learned advocate for respondents has sought to rely upon the statements of proprietor/partner/employees of the petitioner-firm. It is further submitted by Mr.Bhagat that the petitioner was earlier paying the royalty on the basis of finished product after minerals extracted from the land in question though royalty is required to be paid on the basis of minerals extracted and not on the basis of finished products.

5. The learned advocate for the petitioner does not agree with the aforesaid stand. It is not necessary to go into the merits of the contentions raised by other side as this Court proposes to dispose of this petition by directing the respondents to give the petitioner an opportunity of hearing and thereafter determine the amount of royalty payable by the petitioner.

6. In view of the above discussion, the following order is passed:

(i) Impugned notice dated 7.6.2000 is quashed without prejudice to the powers of the respondents to levy and recover the amount of royalty in accordance with law.

(ii) The Collector, Sabarkantha will issue notice to the petitioner calling upon him to remain present before him with all relevant records so that the officers of the concerned department can calculate the amount of royalty/deficit royalty, if any, payable by the petitioner.

(iii) The petitioner shall extend utmost cooperation by keeping the record available at the time of hearing and also person conversant with the affairs of the petitioner shall remain present.

(iv) After the amount of royalty/deficit royalty payable by the petitioner is so determined by the Collector (after giving opportunity of hearing to the petitioner, as aforesaid) the petitioner shall pay the said amount within one month from the date on which the petitioner is served with the notice of demand.

7. It is clarified that the aforesaid directions are issued without prejudice to the rights and contentions of the petitioner to challenge the final order, if any, before appropriate appellate authority.

8. The petition is accordingly disposed of in terms of the aforesaid directions. Rule is made absolute to the above extent. There shall be no order as to costs. Direct service is permitted.

12.9.2000 (M.S.SHAH,J)